

STATE OF SOUTH DAKOTA



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March 23, 2011

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Dear Counsel:

Enclosed please find a signed copy of the Protection Order and
Scheduling Order and Notice of Hearing and Certificate of

Service in the above matter.

Sincerely,

A handwritten signature in cursive script that reads "Charlie McGuigan". The signature is written in dark ink and is positioned above the printed name.

Charles D. McGuigan
Chief Deputy Attorney General

CDM/lde
Enc.

cc: Lee McCahren

BEFORE THE
BOARD OF MINERALS AND ENVIRONMENT
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF THE ADDITIONAL)	Permit #28.0701-EVIDENCE
EVIDENCE FOR PREVENTION OF)	
SIGNIFICANT DETERIORATION (PSD))	CERTIFICATE OF SERVICE
AIR QUALITY PERMIT APPLICATION OF)	
HYPERION ENERGY CENTER - HYPERION)	
REFINING LLC)	

The undersigned hereby certifies that a true and correct copy of the Protection Order and Scheduling Order and Notice of Hearing in the above entitled matter was hand deliver upon:

Roxanne Giedd
Deputy Attorney General
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501
Counsel for Department of Environment and Natural Resources

and by first class U.S. Postal Service Mail, postage pre-paid,
upon:

Todd Meierhenry
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Sioux Falls, SD 57104
Counsel for Hyperion Resources LLC

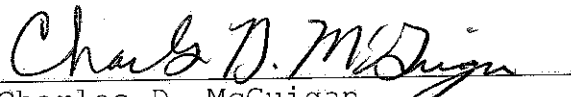
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Attorneys for Citizens Opposed to Oil Pollution, Save Union
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Dated this 23rd day of March, 2011.


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**BOARD OF MINERALS AND ENVIRONMENT
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ADDITIONAL
EVIDENCE FOR PREVENTION OF
SIGNIFICANT DETERIORATION (PSD) AIR
QUALITY PERMIT APPLICATION OF
HYPERION ENERGY CENTER – HYPERION
REFINING LLC

Permit #28.0701-PSD

PROTECTION ORDER

On February 7, 2011, Hyperion Refining LLC filed a Motion for Protection of Confidential Information to protect information regarding cost and energy efficiency of combustion air preheaters. On February 14, 2011, Citizens Opposed to Oil Pollution, Save Union County and the Sierra Club filed Citizen's Objections and Response to Hyperion's Motion for Protection of Confidential Information urging that the information not be held confidential or in the alternative be released to the parties subject to the March 30, 2009 Agreed Protective Order Regarding Confidentiality Information and Documents. The Department of Environment and Natural Resources took no position on Hyperion's request. A hearing was held by the Board on Thursday, March 17, 2011, Lee M. McCahren, Hearing Chairman, presiding. Counsel for the parties appeared in person and telephonically. After hearing the arguments of the parties and after consideration of the briefs and a review of the record, it is hereby ORDERED as follows:

1. Hyperion's Motion for Protection of Confidential Information is GRANTED and the information regarding cost and energy efficiency of combustion air preheaters is found by the Board to be confidential pursuant to SDCL 34A-1-14.

2. Citizens' alternative request that the information be released to the parties subject to the March 30, 2009 Agreed Protective Order Regarding Confidentiality Information and Documents is GRANTED.

3. Hyperion shall disclose the information regarding cost and energy efficiency of combustion air preheaters to Citizens and all parties shall abide by the terms of the March 30, 2009 Agreed Protective Order Regarding Confidentiality Information and Documents.

Dated this 21st day of March, 2011.

By: 

Lee M. McCahren

Hearing Chair

Board of Minerals and Environment

**BOARD OF MINERALS AND ENVIRONMENT
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ADDITIONAL) Permit #28.0701-PSD
EVIDENCE FOR PREVENTION OF)
SIGNIFICANT DETERIORATION (PSD) AIR) SCHEDULING ORDER and NOTICE OF
QUALITY PERMIT APPLICATION OF HEARING
HYPERION ENERGY CENTER – HYPERION
REFINING LLC

This matter returns to the Board of Minerals and Environment pursuant to an Order for Additional Evidence under SDCL 1-26-34 issued by Sixth Judicial Circuit Court on June, 23, 2010. On February 16, 2011 Hyperion filed a motion for a scheduling order. On March 7, 2011, Citizens Opposed to Oil Pollution, Save Union County and the Sierra Club filed a Response to Hyperion's Motion for Scheduling Order and Motion for Entry of Scheduling Order and on March 15, 2011 Hyperion filed its Reply which included a third alternative proposal for a scheduling order. A hearing on the competing proposals for a scheduling order was held by the Board on Thursday, March 17, 2011, Lee McCahren, Hearing Chairman presiding. Counsel for the parties appeared in person and telephonically. After hearing the arguments of the parties and after consideration of the briefs and a review of the record, it is hereby ORDERED as follows:

1. The parties shall adhere to the following schedule, which shall not be modified except by leave of the Hearing Chairman for good cause shown:

DATE	EVENT/ACTION
March 17, 2011	Discovery begins.
May 2, 2011	Parties shall disclose lay witnesses
May 17, 2011	Parties shall disclose expert witnesses

June 1, 2011	Intervention Deadline
July 1, 2011	Discovery must be complete.
July 8, 2011	Deadline for Dispositive Motions

2. FURTHER NOTICE IS HEREBY GIVEN that a contested case hearing in the above-entitled matter is scheduled before the South Dakota Board of Minerals and Environment on **Monday, July 25, 2011, beginning at 10:00 a.m. CDT** or as soon thereafter as counsel may be heard, at the Matthew Training Center, Joe Foss Building, 523 East Capitol Ave., Pierre, South Dakota.


This hearing concerns the issues raised (i) by Hyperion's Construction Deadline Extension Request for the Prevention of Significant Deterioration Permit #28.0701-PSD issued to Hyperion Energy Center, and the DENR's review and action regarding that Request (including the DENR's Statement of Basis, Draft Amended Permit, Response to Comments, and final Proposed Amended Permit); (ii) by the Order for Additional Evidence entered on June 23, 2010 by the Circuit Court for the Sixth Judicial Circuit in *In the Matter of the Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center- Hyperion Refining LLC. Permit #28.0701-PSD, Civ. No. 09-400*; and (iii) by the pleadings filed in this matter, including the February 16, 2011 Petition for Contested Case filed by Hyperion Refining, LLC, and the responses thereto submitted by Intervenors Save Union County, Citizens Opposed to Oil Pollution, and the Sierra Club.

The Board has the legal authority and jurisdiction to hold this hearing pursuant to the provisions of SDCL Chs. 1-26 and 34A-1, the regulations contained in ARSD 74:09 and 74:36, and the Order for Additional Evidence entered on June 23, 2010 by the Sixth Judicial Circuit in *In the Matter of the Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center- Hyperion Refining LLC. Permit #28.0701-PSD, Civ.*

No. 09-400.

The Board may grant, conditionally grant, or deny the application for an extension of the construction deadline filed by Hyperion Refining LLC and any associated amendments to PSD Permit #28.0701-PSD and may grant or deny the action requested by Petitioners, Intervenors or DENR. This hearing is an adversary proceeding. Any party to the proceeding has the right to be present and to be represented by an attorney. These and other due process rights may be forfeited if they are not properly exercised at the hearing.

Dated this 21st day of March, 2011.

By: 
Lee M. McCahren
Hearing Chair
Board of Minerals and Environment